IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.221 OF 2005

Shivaji Bhau Kondhare & Ors. .. ..Appellants

Versus

Sou. Vastala Baban Padwal & Ors... ..Respondents

Mr.P.R.Arjunwadkar with Mr.H.V.Kode for appellants

Mr.G.S.Godbole with Mr.R.D.Barve for respondent nos.1 to 4-c

CORAM : P.V.KAKADE, J.

DATE : 19TH JULY 2005.

P.C.:

1. This is an appeal preferred by the appellants against the judgment and order passed by District Judge, Pune dated 3.9.2004 partly allowing the appeal and thereby shares of the parties were modified and confirming the judgment of the trial court whereby the suit was decreed for partition by order dated 29.9.2001.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiffs filed the suit for partition and separate possession of the suit property as per their respective shares. The property belong to Bhau Shripati, who had two wives. Second wife of Bhau viz. Geetabai, who had four daughters, who are respondent nos.1 to 3 and one Leelabai. Leelabai had expired leaving behind her sons i.e. Respondent Nos.4A to 4C. Bhau Shripati expired on 28.4.1977 and after his death the appellant No.1 Shivaji started looking after the properties as Karta of the family. The properties were subsequently included in the area of Pune Municipal Corporation. It was alleged that the prices of the properties increased, the appellants started denying right of the respondents and therefore, it gave raise to the filing of the present suit.

. The defendants resisted the suit on various grounds submitting that the suit properties were ancestral properties and as such they had their respective shares as per the provisions of Hindu

Succession Act.

4. The learned Trial Judge adjudicated the dispute on merits holding that the plaintiffs had proved that the suit properties were ancestral properties of the joint family of the plaintiffs and defendants and they had equal shares therein. They were also entitled to possession of their respective shares. The case of the defendants that the plaintiffs had no right, title and interest in the suit property was negated and suit came to be decreed. The appeal was carried to the District Court. The learned District Judge after hearing both the parties came to the conclusion that except for the computation of shares by the trial court, the findings recorded by the trial court were legal and proper and as such the appeal was partly allowed modifying to the extent of share amongst the parties. Hence the present appeal.

5. The only question raised at this stage, which required consideration, is whether the provision of Section 6 or Section 8 of the Hindu Succession Act are applicable to the present case. Having considered the entire record I am of the view that there is no evidence

on record to show that Bhau (late father) had inherited the suit lands from his father Shripati and on the other hand as per the documentary evidence viz. Exhs.87, 88, 89 and 90 along with Exhs.35 to 67 mutation entries and 7/12 extracts were sufficient to show that all the properties were self acquired properties of Bhau under Section 32-G and private sale deed i.e. self acquired properties, therefore, both the courts below have come to the conclusion, on the basis of evidence, that Section 8 of the Act could be applicable and the dispute would be governed by the said provision and not by the provision of Section 6 of the said Act, giving rise to the notional partition on the basis of principles involved therein.

6. The learned counsel for the appellants also submitted that even if it is assumed that the dispute is governed by Section 8 of the said Act still the evidence on record was sufficient to show that there was no other property belonging to Bhau, and therefore, all the said properties must be held as joint Hindu family properties. It was further submitted that there was no pleading to that effect and therefore, the appellants had no opportunity to meet with the said issues.

However, I would prefer to disagree with this proposition so far as application of Section 8 of the said Act and I hold that both the courts below have properly appreciated the evidence on record in the light of relevant provisions, and therefore it would brook no interference.

7. In the result the appeal stands dismissed with no order as to costs. Consequently Civil Application No.459 of 2005 also stands dismissed with no order as to costs.

. At this stage the learned counsel for the appellant seeks Stay of the Trial Court’s Order. In view of the facts and circumstances the trial court’s order stands stayed for six weeks.